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ABSTRACT

The dimensions of the separation of powers principle are explored through three lessons in the subject areas of U.S. history, U.S. government, and world history. In 1748, a French nobleman, Baron de Montesquieu, wrote a book called "The Spirit of the Laws," in which he argued that there could be no liberty when all government power was held by one person or even one group of rulers. Montesquieu described a political system that separated power into three branches of government. He believed that a government based on the "separation of powers" plan would ensure liberty by preventing the establishment of an absolute ruler like Louis XIV. The impact of absolute rule is illuminated through a short discussion of the French Huguenots' oppression during the reign of Louis XIV. The principle of separation of powers is depicted through a discussion of the Radical Republicans in Congress and the impeachment proceedings against President Andrew Johnson. The last lesson focuses on the separation of powers in the U.S. government by reviewing the power to declare war. Even though Congress has declared war five times, U.S. soldiers have been sent into combat situations over 100 times by the President acting as commander-in-chief of the military. Each lesson is accompanied by an activity such as a debate or an historical trial. (SM)

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SEPARATION OF POWERS

CONSTITUTIONAL RIGHTS FOUNDATION
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Bill of Rights In Action

Winter 1987 / Vol. 3, No. 3

Separation of Powers / World History

The Sun King: France Under the Absolute Rule of Louis XIV

One must beware of oneself and one's inclinations and always be on guard against one's nature.

— from *Memoirs of Louis XIV*

One day, King Louis XIII's son was instructed by his writing teacher to copy these words over and over again: "Homage is due to kings, they may do as they please." The future king of France was not really a scholar, but he learned this lesson well. When he became king, he reigned over France as if it and all its people were his personal possessions. He became the model of an absolute ruler. He was Louis XIV, the Sun King.

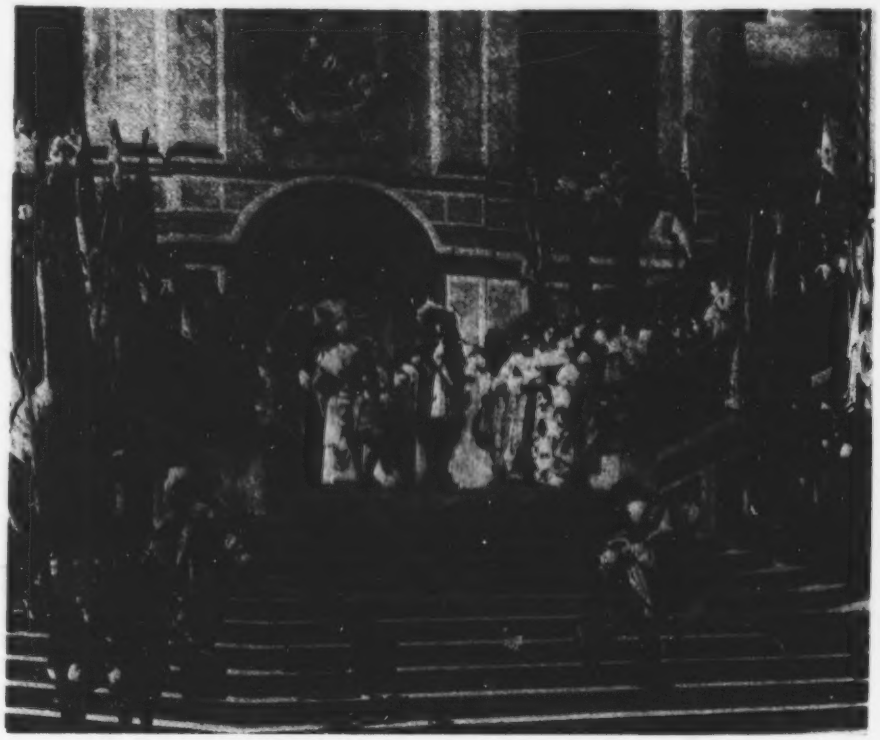
The Sunrise

When Louis was four years old, his father died. Louis' mother, Anne of Austria, ruled in his name until he came of age. Since Anne had no desire to actually govern France, she appointed Jules Mazarin as First Minister. It was Mazarin, an Italian diplomat and Cardinal in the Roman Catholic Church, who really ran the government of France until Louis came of age.

In addition to being First Minister, Cardinal Mazarin took on the responsibility of tutoring young Louis in the craft of kingship. Mazarin based his lessons on his own real-life experiences in running the country and dealing with foreign powers. When he decided Louis should study warfare, Mazarin sent him off to watch real battles. This interested and excited Louis more than any other part of his education.

On June 7, 1654, at age 15, Louis was crowned in Rheims Cathedral, the site of French coronations since the days of Joan of Arc. He wore a robe woven from silver cloth and a black velvet cap studded with diamonds. For a while, Louis allowed his First Minister, Mazarin, to continue to run the government. But the young king soon showed signs of impatience. Less than a year after his coronation, Mazarin informed Louis that the Parlement of Paris was holding an unauthorized meeting. A body of lawyers and judges, the Parlement had the limited responsibility of registering the edicts or official proclamations of the king (at this time actually written by Mazarin).

Louis apparently became angry when the Parlement met with the intention of debating his edicts. The 16-year-old king, who had been hunting in the country, rode directly to Paris and stormed into the meeting. Still in his hunting clothes, Louis told the Parlement to stop their discussion of his edicts. He then strode out before anyone had a chance to say a word. In this, Louis XIV's first and only confrontation with democracy, democracy lost.



Louis XIV and his Court. (The Bettmann Archive.)

Cardinal Mazarin died in 1661. The king shocked everyone when he announced, the morning after Mazarin's funeral, that he intended to rule as his own First Minister. He would be the absolute ruler of France.

Louis believed in the "divine right of kings." According to this belief, God placed kings on earth to act as His representatives. One French writer referred to kings as "the image of God" on earth. In effect, the authority of kings was the authority of God, and those who opposed a king opposed God. It followed that kings were accountable only to God, not to other men or even to the law. Though all-powerful, kings were also commanded by God to rule wisely and justly.

Louis XIV himself wrote: "The function of kings consists principally in permitting

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With these editions of *Bill of Rights in Action*, Constitutional Rights Foundation will commemorate the Bicentennial of our Constitution. From now until 1991, the Bicentennial of the Bill of Rights, we will bring you special features focusing on important constitutional themes and issues. As before, each article and activity is designed to be incorporated into what you already teach: U.S. History, U.S. Government, World History, Economics and International Studies. This issue focuses on separation of powers.

We hope that you will join with us in making our precious constitutional heritage an integral part of every student's education throughout the United States. Send us your name and mailing address and, four times a year, you will receive *Bill of Rights in Action* absolutely free. (See page 7.)

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good sense to do its work...." To Louis, "good sense" always turned out to be what he believed was best for France. Louis believed he owned France and that its people were his children. As such, he expected complete obedience from all of them, nobles as well as peasants.

When in power, Louis XIV literally supervised everything and everyone in his government. He wrote in his *Memoirs*:

> ...I have been marching...never easing up on my labors; informed about everything; listening to the least of my subjects; knowing at every moment the number and the quality of my troops and the condition of my strongholds; constantly giving my orders for all their needs; negotiating directly with ambassadors from foreign nations; receiving and reading dispatches; ...handling the Revenue and expenses of my State;...keeping my affairs so secret that nobody else ever deals with them before me....

Louis XIV did have advisors, but he made all the important decisions. He appointed all his government officials but excluded nobles whom he distrusted. He sent his men into the provinces to extend his control over local matters. He appointed judges to preside over controversial trials. He established taxes by edict. He and his able finance minister, Colbert, regulated industry, agriculture and trade with a blizzard of detailed rules. All books and other publications had to be approved by his censors. In the words of one French historian, "In this great realm, there was no longer anyone who could breathe freely." His rule was absolute.

The Glory

Louis XIV did not spend all his time supervising dull government affairs. Louis became the patron of artists, playwrights, composers and writers. Paris became the center of the arts, fashion and manners. To be a cultured person anywhere in the world, one had to read and speak French.

Without doubt, the greatest cultural achievement of Louis XIV was his spectacular palace at Versailles, 12 miles from Paris. Louis hired the best architects and artists to build and decorate what would become the symbol of his reign. On some days 30,000 workers labored at Versailles. In 1682, some 20 years after the work on Versailles began, Louis moved into the palace with its hundreds of rooms and magnificent Hall of Mirrors. Louis himself wrote the first guidebook for the Garden of Versailles, an overwhelming sight by itself.

About 6,000 people lived at Versailles, where Louis XIV now held his court. Many were nobles who had little to do but attend the king's parties, gamble and gossip. One noblewoman complained in her diary: "Life is more boring here than any other place in the world." As for the king, he enjoyed hunting, entertaining foreign visitors and watching the latest plays and ballets (he danced in some himself). He also spent time with his mistresses and flock of illegitimate children.

For the rest of his life, Louis XIV worked and played at Versailles. Because all of France seemed to revolve around him, it was only natural that his subjects called him "The Sun King."

In foreign affairs, Louis XIV wanted to make France the most powerful country in the world. To fulfill this desire, Louis decided to build the best army in Europe. Since Louis had largely excluded the nobles from his government, he put them in charge of establishing his army. Rather than appointing his officers on the basis of feudal privilege and rank, he chose them for their ability and seniority. This created some discontent, but led to a more efficient fighting force.

Louis made the Marquis de Louvois his "Grand Marshal." Louvois attracted soldiers into the army with decent pay, bonuses, medical care, decorations and a chance for promotion. He introduced new elements of military discipline, such as marching in step. He armed his men with muskets and bayonettes and made the infantry the most important part of the army. By 1672, Louvois commanded a military force of over 100,000 men, the largest and most modern in Europe.

Louis built up his army for the security and glory of France. Surrounded by potential enemies, Louis sent his army on expeditions to expand French territory. Between 1671 and 1684, France fought largely successful wars with Spain, Holland, England and the Holy Roman Empire. At times, Louis took personal command of his army. Louis believed that the victories won added to the glory of France and of course, to himself.

Louis XIV's First Minister and tutor, Cardinal Mazarin. (The Bettmann Archive.)

By 1685, at age 47, the Sun King had reached the peak of his brilliance. All of Europe acknowledged him as Le Grand Monarque, The Great King. Other kings not only feared him but also tried to imitate his style. Even the Catholic Church was intimidated. He wrote to Pope Innocent XI: "I am absolute master of all my subjects... and no one whoever he may be has any right to meddle in that which I find it appropriate to command."

Many of the French people seemed to admire their Great King and supported his rule. The nobles were proud of their role as officers in the greatest army in Europe. Many from the middle class enjoyed their positions of influence in the king's government. The merchants prospered under the king's economic policies. The peasants preferred the absolute rule of Louis XIV over the oppression of the local nobility. All gloried in the splendor of Versailles at home and the prestige of France abroad. Then, suddenly, the Sun began to set.

The Sunset

As Louis XIV surveyed his kingdom in 1685, only one group of people seemed to be outside his control. They were the Huguenots, a minority of one million Protestants living in Catholic France. In the area of religion, as in all other matters, Louis believed that his subjects should obey the will of their king. It made "good sense" to Louis that if he was Catholic all his subjects should be, too.

In 1598, Henry IV, the grandfather of Louis XIV, had issued the Edict of Nantes. Although it proclaimed France a Catholic country, it allowed the Protestant Huguenots to worship freely. As an act of religious tolerance, the Edict of Nantes brought an end to religious warfare in France.

The Huguenots tended to work hard and were obedient to their king in all matters except for their Protestant religion. When he became king, Louis encouraged his officials to pressure the Huguenots to convert to Catholicism. Huguenots were barred from certain trades and professions until they joined the Catholic Church. A Bureau of Conversions offered bribes to Huguenots if they would convert. As a result of these efforts, many Huguenots became Catholics.

On October 17, 1685, Louis took the final step. By cancelling the Edict of Nantes, he outlawed the Protestant religion in France. All Protestant ministers were ordered out of the country, while followers of the "pretended reformed religion" were forbidden to leave.

Louis authorized extreme measures to force the Huguenots to convert to Catholicism. Huguenot churches were destroyed. Soldiers were quartered in the homes of some Huguenot families until they converted. Special taxes were imposed on those still refusing to embrace the Catholic faith. Huguenot children had to be baptized in Catholic churches and were sent to Catholic schools.

Some Huguenots attempted to assemble and worship secretly. About 200,000 fled from the country at this time, sometimes with the help of their Catholic neighbors. Those who were caught often ended up in prison or chained to oars in the king's galleys. Some Huguenot leaders were hanged, some Huguenot women found themselves banished to Catholic convents.

Although many Huguenots converted to Catholicism, few truly embraced the new faith. Others resisted violently and even formed military units that marched against the royal army. Civil war threatened. Perhaps most damaging to France was the flight of thousands of Huguenot skilled workers, farmers, merchants and other hard-working people to Holland, England and elsewhere.

Adding to the religious turmoil after 1685 were a number of foreign wars that for 20 years drained France of manpower, money and food. Alliances formed by other European powers inflicted a series of disastrous defeats for Louis' army. The Battle of Denain, fought in the Netherlands in 1712, almost resulted in an invasion of France. Though victorious, the army, as well as the rest of France, was exhausted.

Doubts about the Sun King and his policies were not new. The Archbishop of Cambrai wrote a scathing letter to Louis in 1694 condemning him for the suffering he had caused his subjects by starting a series of unjust wars: "...You have been rendered the common enemy of your neighbors and have been caused to appear a cruel master in your realm....Your people, whom you should love as your children...are dying of hunger." The Archbishop described France as "but a great poorhouse" with abandoned farms, depopulated cities and halted trade. "It is you, Sire, who called down on yourself all these difficulties," he continued. "Everyone sees this, but no one dares bring it to your attention."

The letter also contained some advice: "True courage consists of undeceiving yourself and making firm decisions according to necessity." Louis probably never saw this letter. Even if he had seen it, it is doubtful that he would have changed any of his policies which still made "good sense" to him.

Toward the end of his reign, Louis suffered a string of personal losses that threatened his succession. His son, whom he had been training to take over as king, died in 1712. His grandson, next in the line of succession, died a few weeks later. Another grandson died in 1714. His last male heir, a great-grandson, was only four years old when Louis became ill in 1715. A few days before he died, he spoke to the child who would later become Louis XV:

> My child, you are going to be a great king, do not imitate me in the taste I have had for building, or in what I have had for war; try, on the contrary, to be at peace with your neighbors.

King Louis XIV died on September 1, 1715, a few days before his 75th birthday. After a reign of over 70 years, the brilliant light of the Sun King was extinguished forever.

For Discussion and Writing

1. Louis XIV has been called the greatest example of an absolute ruler in European history. What evidence from the article can you give to support this judgment? What is the difference between an absolute and a democratic ruler?
2. Write a letter to Louis XIV expressing your opinion about his absolute rule.
3. Vincent Buranelli, a biographer of Louis XIV, has made this judgment about the Sun King: "The French Revolution could not have occurred under Louis XIV, but except for him, the upheaval might not have occurred under his successor." Explain this quotation in your own words. Find evidence in the article to support Buranelli's claims.
4. Read the quotation from the *Memoirs of Louis XIV* at the beginning of this article. Do you think Louis XIV followed his own advice? Why or why not?

For Further Reading

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A C T I V I T Y

The Sun King on Trial

Louis XIV was an absolute ruler, but was he guilty of being a *tyrant*? A tyrant is a cruel and oppressive ruler. In this activity you will have an opportunity to put the Sun King on trial before "The Court of History."

1. Organize the class into three groups.
   a. One small group of 2-5 students will act as the prosecution.
   b. Another small group of 2-5 students will act as the defense.
   c. The rest of the class will act as the jury.
2. The question in this trial is this: Should the Sun King be found guilty of being a tyrant?
   a. The prosecutors will try to convince the jurors that Louis XIV was a tyrant by presenting evidence from the article showing that he was a cruel and oppressive ruler.
   b. The defenders will try to convince the jurors that Louis XIV was not a tyrant by presenting evidence from the article showing that he was a great king who ruled for the benefit and glory of France.
   c. The prosecutors and defenders may wish to do additional research in their history textbook, encyclopedias and the school library.
   d. The jurors will listen to each side make its presentation of evidence, ask questions and finally vote on the question of the trial. If the Sun King is found guilty, he will be punished by being forever condemned by history.

Montesquieu and the Separation of Powers

The French philosopher, Montesquieu. (The Bettmann Archive.)

In 1748, a French nobleman, Baron de Montesquieu, wrote a book called *The Spirit of the Laws*. Montesquieu, who was 26 when Louis XIV died, argued that there could be no liberty when all government power was in the hands of one person or even one group of rulers.

How could a country have government and liberty too? In his book, Montesquieu described a political system that separated power into three branches of government. The most important branch, the legislature, was to be divided between two houses: one representing the nobility and the other representing the common people. Together these two houses were to make the laws, and each house would have the power to veto the other's acts.

The executive branch, according to Montesquieu, should be headed by a king who would have the right to veto the acts of the legislature. The king would also have the responsibility of carrying out the laws, providing for the public safety and conducting foreign affairs.

The judiciary, the third and weakest branch of government, would try and punish criminals as well as resolve legal disputes among individuals. Montesquieu viewed the national judges as "no more than the mouth that pronounces the words of the law, mere passive beings."

Montesquieu believed that a government based on this "separation of powers" plan would ensure liberty by preventing the establishment of an absolute ruler like Louis XIV. About 40 years after Montesquieu wrote *The Spirit of the Laws*, the Founding Fathers at Philadelphia included the basic idea of the separation of powers in the United States Constitution. What are the similarities and what are the differences between Montesquieu's plan and the separation of powers in the Constitution?

King Andy vs. the Radicals

The United States government is separated into three branches: the Congress, the Presidency and the Judiciary headed by the Supreme Court. The writers of the Constitution adopted this "separation of powers" principle to prevent one person or one part of the government from becoming too strong and possibly dictatorial.

"King Andy"

In the election of 1864, Abraham Lincoln, a Republican, chose Senator Andrew Johnson, a Tennessee Democrat, as his vice presidential running mate. Lincoln believed that Johnson, the only senator from a rebel state to remain loyal to the Union, would be able to persuade Democrats to vote Republican.

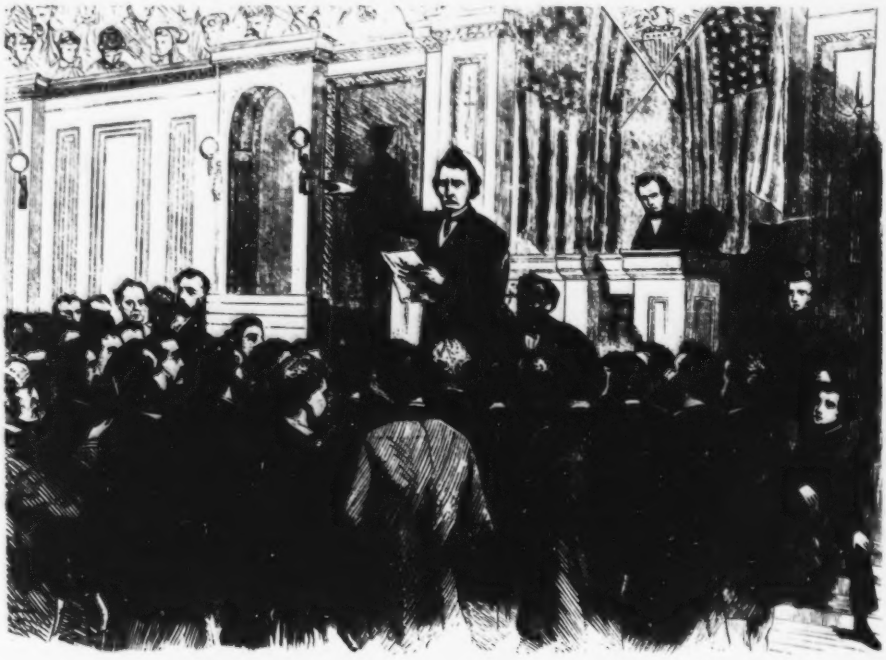
After Lincoln was assassinated, Andrew Johnson took the oath of office on April 15, 1865. Two very difficult questions faced the nation. First, under what conditions should the southern rebel states be readmitted into the Union? Second, what rights should the freedmen or ex-slaves now have?

A little over a month after he became president, Johnson began executing his plan for reconstructing the South. Johnson pardoned all rebels except Confederate leaders. He also restored all rebel property except for slaves. Finally, he authorized each rebel state to call a convention of white delegates to draw up a new constitution. Once completed, a new state government could then be formed, and the state could apply for readmission to the Union.

During the summer of 1865, the rebel states held their constitutional conventions followed by elections to choose state and federal government representatives. None of the new state constitutions allowed the black freedmen to vote. President Johnson himself opposed the idea of ex-slaves voting. "It would breed a war of races," Johnson said.

When Congress finally met in early December, the Republicans, in control of both the House and the Senate, were very disturbed. Here were the very same men who had led the rebellion now returning to power throughout the South. Worse still, the new southern governments were passing "black codes" which made it difficult for the freedmen to work in certain jobs, own land or even quit a white employer. Most troubling to Republicans in Congress was the fact that President Johnson had, on his own authority, established a reconstruction plan for the South. In the opinion of many Republicans, this was the job of Congress and Congress alone.

In early February, 1866, the Republican Congress passed the Freedmen's Bureau Bill. It called for the distribution of land to the freedmen, provided schools for their children and set up military courts in the southern states to protect freedmen's rights. But to the dismay of the Republicans and the joy of most white southerners, President Johnson vetoed the bill. He called it unconstitutional and too expensive. When Republicans failed to muster enough votes to override his veto, Johnson believed that he had won the battle over Reconstruction.



Thaddeus Stevens, Johnson's fiercest opponent, making the last speech on impeachment in the House. (The Bettmann Archive.)

On Washington's birthday, a few days after he had vetoed the Freedmen's Bureau Bill, Johnson spoke to a crowd outside the White House. During the speech, he claimed that "new rebels" in the North were plotting to take over the government. He charged that some members of Congress were as traitorous as Jeff Davis. "Give us the names!" a voice in the crowd shouted. Johnson named three Republican leaders of Congress. Angry Republican reaction in Congress now began to solidify opposition to "King Andy," as some began to call the president.

In March, 1866, Congress passed the Civil Rights Bill, which declared the ex-slaves to be citizens of the United States and gave them the right to make contracts, sue, be witnesses in court and own land. Again Johnson used his veto. He stated in his veto message that blacks were not qualified for citizenship, and the proposed bill would "operate in favor of the colored and against the white race." The Republicans, abandoning all hope of working with the Democratic president, overrode his veto by a two-thirds majority in both the House and the Senate. For the first time in American history, Congress overturned a presidential veto.

The Radicals

When the 39th Congress met in December, 1865, the Republicans had large majorities in both the House of Representatives and the Senate. Yet, the Republicans did not agree on any single reconstruction plan for the South. Some Republicans supported Johnson's program. Others wanted to proceed slowly on both the readmission of rebel states and freedmen's rights. Still another group wanted to treat the former Confederate states as "conquered provinces" and pass laws providing equal rights for the black man. The members of this group were called the Radical Republicans or just Radicals. The man who more than any other symbolized the Radical viewpoint was a 73-year-old member of the House of Representatives from Pennsylvania: Thaddeus "Old Thad" Stevens.

During the summer of 1865, when Johnson was implementing his reconstruction plan, Thaddeus Stevens formulated his own ideas on the matter. He believed that the rebel states had taken themselves out of the Union when they seceded; now they should be dealt with as territories of the United States. Furthermore, Stevens argued, since the large landowners of the South were the ones who brought on the Civil War, the U.S. government should confiscate their property

and give it to the freedmen (40 acres for each adult male). According to Stevens, this would break the back of the old slave-holding class and prevent it from regaining political power in the South. Yet, Stevens was not yet ready to call for the right to vote for the freedmen.

At first, Stevens and his Radical friends made up only a minority of the Republicans in Congress. Unable to get his reconstruction plans passed into law, Stevens worked to build a coalition of House members and senators to deal with all reconstruction matters.

On December 13, 1865, Congress created the Joint Committee on Reconstruction. It consisted of nine representatives and six senators, most of whom were Radicals hand-picked by Stevens. As the most influential member of his committee, "Old Thad" would have a powerful voice in deciding the nature of Congressional action on reconstruction. In a reference to the dictatorship by committee that emerged during the French Revolution, President Johnson called the Joint Committee the "French Directory."

The Radicals Take Over

Congress, increasingly Radical after Johnson's veto of the Freedmen's Bureau and Civil Rights bills, passed a constitutional amendment (the 14th) in June, 1866. The amendment declared that all persons born in the U.S. were automatically citizens. This, of course, included the ex-slaves. In addition, Amendment XIV prohibited states from depriving citizens of "equal protection of the laws." Although it did not include the right to vote, it went a long way toward establishing equal rights for freedmen.

President Johnson, who had no role to play in amending the Constitution, sent a message to Congress condemning Amendment XIV. For good measure, he also vetoed a second Freedmen's Bureau Bill. This time, however, Congress overrode him on the same day as his veto.

During the summer of 1866, it became clear that the freedmen needed the protection of the federal government. On July 30, a group of whites and blacks attempted to hold a Radical political convention in New Orleans. A mob of ex-Confederate soldiers attacked the convention members. The New Orleans police not only failed to protect them but actually joined in the attack. Nearly 40 of the convention members, mostly black men, were killed. News reports of the "New Orleans massacre" shocked northerners and supplied proof to many that President Johnson's reconstruction program was too lenient.

After these events, the northern states were ready to support Amendment XIV, but none of the southern states ratified it. It failed to receive the required three-fourths approval. The Radicals in Congress were enraged and the majority of people in the North seemed ready for harsher action against the former Confederate states. "King Andy" found himself increasingly under attack by a hostile Congress and public.

Under Stevens' leadership, Congress now passed a reconstruction law which was described at the time as "written with a steel pen made out of a bayonet." The law abolished all the southern state governments set up under Johnson's program. In their place, Congress created five military districts, each to be commanded by an army officer. The army commanders were authorized to rule by martial law, using federal troops and military courts to maintain order. President Johnson vetoed the law, saying that it would create an "absolute despotism" over the South. But Congress voted to override his veto.

In a series of follow-up laws, Congress required each rebel state to hold a new constitutional convention made up of both white and black delegates. Any new constitutions which came out of these conventions had to include the right to vote for all black adult males. In addition, the southern states were directed to ratify Amendment XIV before they could apply for readmission to the Union. Johnson vetoed every one of the follow-up laws. No matter. His vetoes were all overridden by Congress.

In the meantime, Congress began to pressure President Johnson himself. The Radicals, now with the support of most other Republicans, passed the Tenure of Office Act. This prohibited the president from firing any appointed government official, even his own cabinet members, without the approval of the Senate. Johnson vetoed the act as an unconstitutional invasion of his executive power (a violation of the separation of powers principle). Congress again overturned his veto.

Impeachment and Trial

The government crisis came to a climax early in 1868 when President Johnson attempted to fire his Secretary of War, Edwin Stanton. He did so without the approval of the Senate. Stanton had been working with the Radicals to undermine Johnson's reconstruction policies. Firing Stanton was, of course, a violation of the Tenure of Office Act. Johnson's attempt to test the constitutionality of this law in the Supreme Court was blocked by the Radicals.

On February 24, 1868, the House of Representatives voted to impeach President Johnson. To do so under the Constitution, they had to charge him with "high crimes or misdemeanors." Most of the charges related to his firing of Stanton.

Johnson's trial began in the Senate on March 30. Seven House members, including Thaddeus Stevens, served as the prosecutors of Johnson. Johnson was defended by five able lawyers. The president himself never appeared in the Senate during his trial.

Of course, the real reason for Johnson's impeachment was that he refused to cooperate or compromise with Congress over the reconstruction of southern state governments and black rights. Yet the Constitution allows for the removal of a president only if he violates some law. Thus, the only legal cause for putting "King Andy" on trial was his violation of the Tenure of Office Act when he fired Stanton. Still, the constitutionality of this law was questionable and had never been tested in the courts. It was a weak reason to remove a president.

After the trial, which lasted over a month, the Senate failed by one vote to convict Johnson and remove him from the presidency. The doctrine of separation of powers prevailed. Congress had not taken over the government (President Pro Tem of the Senate Benjamin Wade, a Radical, would have become president if Johnson had been removed). On the other hand, military reconstruction still remained in the South. Moreover, Johnson had only about nine months left in his term, his hopes for being elected president in November all but gone. It was a victory for the presidency but not for President Johnson.

For Discussion and Writing

1. Assume that Andrew Johnson and Thaddeus Stevens had run against each other in the presidential election of 1868. Prepare a campaign speech for each man. Whom would you have voted for in this election? Why?
2. Do you think the Radicals were right in attempting to remove Andrew Johnson from the presidency? Why or why not?
3. Read Article II, Section 4 of the Constitution. Should there be additional reasons for impeaching and removing a president? How do you think Thaddeus Stevens would have answered this question? What additional reasons (if any) would you like to add to Article II, Section 4?
4. Explain the last sentence in the article: "It was a victory for the presidency but not for President Johnson."

For Further Reading

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A C T I V I T Y

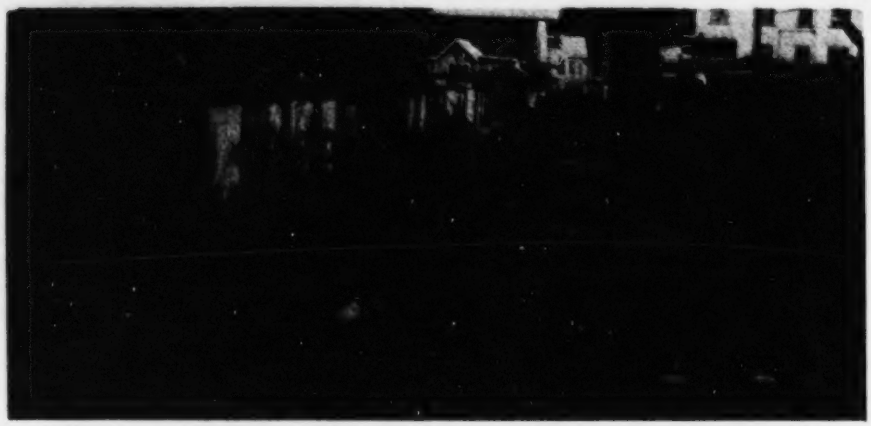
A Fair Reconstruction Plan

What do you think would have been a fair reconstruction plan? Meet as a class or in small groups to discuss and answer each of the following questions:

1. What should be the purpose of reconstruction?
   a. To quickly get the southern states back into the Union with few conditions.
   b. To get the southern states back into the Union with full equal rights for the ex-slaves.
   c. To get the southern states back into the Union with some rights for the ex-slaves.

(continued on back page)

Taking America to War: Who Has the Power?



U.S. Marines on the streets of Greenville, Grenada soon after invasion. (UPI/Bettmann Newsphotos.)

Who has the power to take America to war? Thomas Jefferson thought that this question was firmly answered when the Constitution granted to Congress alone the power "to declare war" (Article I, Section 8). Jefferson believed that only the people, acting through their representatives in Congress, should have the power. But in another part of the Constitution, the president is designated "Commander-in-Chief of the Army and Navy of the United States" (Article II, Section 2). So although Congress has the formal power "to declare war," the president as Commander-in-Chief seemingly has the power to direct the armed forces at his will.

Throughout American history, Congress has declared war only five times. Only once, for the War of 1812, did Congress seriously debate whether or not to declare war. Yet there have been over 100 other occasions when American fighting forces were sent into combat situations. Each time the president acted on his own, using his authority as Commander-in-Chief of the military. In most of these situations, Congress accepted or endorsed the actions of the president.

The peak of presidential war-making has taken place in recent decades: The Korean War resulted in over 33,000 American combat deaths, and in Vietnam, nearly 50,000 died in combat. In neither of these cases did Congress vote to declare war, although they did approve of the presidential action. Senator William Fulbright, Chairman of the Senate Foreign Relations Committee during the Vietnam War years, lamented in 1967: "The Congress has lost the power to declare war as it was written into the Constitution. It has not been so much usurped as given away."

The War Powers Act

As American casualties escalated in Vietnam, Congress decided it was time to limit the war-making power of the president. Initiated by Senator Jacob Javitz and other members of Congress, the War Powers Act was passed by the House and the Senate on October 10, 1973.

The purpose of the War Powers Act (also known as the War Powers Resolution) was "to insure that the collective judgment" of both the president and Congress would determine when U.S. troops were to be committed to combat. To accomplish this, the law directs the president "in every possible instance" to "consult with Congress" if American soldiers are to be sent into a hostile situation. However, the law does not specify exactly who in Congress the president should consult. Neither does it specify whether Congress should voice its approval or disapproval of the president's proposed action.

In any event, after troops are actually committed to "hostilities or into situations where imminent involvement in hostilities is clearly indicated," the president is required by the law to submit a report to Congress within 48 hours. This report has to include an explanation of why the president decided to use the armed forces and an estimate of the "scope and duration" of the military action.

Finally, 60 days after the president submits a report to Congress, any troops still remaining in a hostile situation must be withdrawn unless Congress votes to continue the operation or declare war. The War Powers Act also gives Congress the authority to vote to end a military action at any time during the 60-day period.

President Nixon vetoed the War Powers Act. He claimed the bill was an unconstitutional invasion of the president's executive power as Commander-in-Chief of the armed forces, a violation of the "separation of powers" principle. Nevertheless, both houses of Congress overrode his veto by the required two-thirds vote on November 7, 1973.

The Record Under Ford, Carter and Reagan

Every president since Nixon has agreed with him that the War Powers Act is unconstitutional. All have taken the position that the president is not bound by the law. However, since the Supreme Court has never ruled on the law's constitutionality, Presidents Ford, Carter and Reagan have treated it cautiously. In some instances they chose to voluntarily observe certain provisions of the War Powers Act. In other instances they ignored the law altogether.

In 1975, Ford ordered U.S. Marines to rescue an American merchant ship and crew captured by Cambodian communists. The 39 crew members were released, but 41 Marines lost their lives during the brief operation. Ford informed Congressional leaders before he ordered the Marines into combat but did not comply with the full requirements of the Act. He based his action on his authority as Commander-in-Chief. Congress did not protest Ford's apparent disregard for the War Powers Act.

On November 9, 1979, Iranian student radicals took over the U.S. embassy in Tehran. After five months of fruitless negotiations over the American hostages held in the embassy, President Carter ordered a secret military rescue mission. The operation failed when a helicopter accidentally crashed into a transport plane, killing eight servicemen. Carter did not even consult with Congress before the operation and, like Ford, based his action on his authority as Commander-in-Chief.

In September 1982, the Lebanese government requested the U.S. to join with France and Italy in sending troops to keep the peace in its war-torn country. President Reagan ordered 1,200 Marines to take up positions at the Beirut airport. He cited his "constitutional authority with respect to the conduct of foreign relations and as Commander-in-Chief." Reagan did not consult with Congress or submit a report as spelled out in the War Powers Act. He maintained that the mission did not involve combat, but that the Marines had "the right of self-defense." Congress took no action.

Finally, a year after the Marines landed in Lebanon, Congress began to demand that President Reagan observe the requirements of the War Powers Act. Reagan agreed to a compromise with Congress authorizing the Marines to stay in Lebanon for just another 18 months. However, when President Reagan signed the compromise bill, he said that he might use his authority as Commander-in-Chief to keep the Marines in Lebanon beyond the 18-month period.

Only a few days after the compromise bill became law, 241 Marines were killed in their barracks as a result of a terrorist bombing. Public pressure soon increased to bring the Marines home. Within four months all U.S. forces had been withdrawn from Lebanon.

A few days after the bombing in Lebanon, President Reagan ordered U.S. military forces to invade the Caribbean island of Grenada. His stated reason was to rescue Americans caught up in a civil conflict there. Several days of intense fighting against armed Cubans resulted in 18 Americans killed. Although Congressional leaders were told about the invasion once it was underway, President Reagan again ignored the procedures of the War Powers Act.

Unless the Supreme Court rules that the War Powers Act is constitutional, presidents in the future are likely to continue to carry out military operations without consulting with Congress in any meaningful way. As long as the use of combat troops is relatively quick and painless, as in Grenada or the Libya raid in 1986, Congress will probably yield to the president's judgment. However, the War Powers Act might still serve as a check on presidential war-making in those situations like Lebanon where American forces seemed to be engaged for an extended time with the potential for many casualties.

After 200 years, the power to take America to war is still not clear-cut. While Congress possesses the constitutional power "to declare war," and the War Powers Act still remains on the books, it is the president, acting as Commander-in-Chief, who actually makes war.

For Discussion and Writing

1. Why is the constitutional power to take America to war not clear-cut?
2. On what grounds have Presidents Nixon, Ford, Carter and Reagan all argued that the War Powers Act is unconstitutional?
3. In which of the following situations (if any) do you think the president should have strictly observed all the provisions of the War Powers Act? Explain your answer.
   a. Vietnam and Cambodia Evacuations (Ford)
   b. Merchant Ship Rescue (Ford)
   c. Iran Embassy Hostage Rescue (Carter)
   d. Lebanon Peacekeeping Force (Reagan)
   e. Grenada Invasion (Reagan)
   f. Libya Air Raid (Reagan)

For Further Reading

"Controversy Over the War Powers Act," *Congressional Digest* (Nov. 1983).

Thomas, Ann Van Wynen and A.J. Thomas. *The War-Making Powers of the President.* Dallas, Tex.: SMU Press, 1982.

A C T I V I T Y

Debate: Is the War Powers Act A Good Idea?

Organize a class debate on the question above. Form two teams of 2-5 students each to research the pro and con positions. Team members should first study the arguments of Jacob Javitz and Senator Barry Goldwater which follow. Then they should gather additional arguments from the article and other materials available in the school library. See especially the November 1983 issue of *Congressional Digest* magazine. After completing their research, the pro and con teams should present their arguments to the rest of the class, which will decide the winner of the debate.

PRO: JACOB JAVITZ (former Republican U.S. Senator from New York)

The following arguments supporting the War Powers Act have been quoted from an article by Jacob Javitz in the Fall 1985 issue of *Foreign Affairs* magazine. Mr. Javitz helped to write the War Powers Act in 1973.

1. "The War Powers Resolution of 1973 remains one of the firmest supports of our determination that the American people will decide their own fate."
2. "We cannot place the great questions of war or peace in the hands of a single human being, not even our president."
3. "The veto [of the War Powers Act by President Nixon] was overridden because of the urgent need of the people to establish some restraint on the presidency and to safeguard the constitutional responsibility vested in the Congress to declare war, a power to be exercised by the Congress alone without any presidential consent or signature."
4. "The resolution does not represent an effort to tie the president's hands or to deny him his rightful powers — as previous presidents have charged. Rather, the legislation provides the method by which the Congress and the president can render a collective judgment on the question of whether to risk war."

CON: SENATOR BARRY GOLDWATER (Republican Senator from Arizona)

The following arguments opposing the War Powers Act have been quoted from a speech made by Senator Goldwater before the U.S. Senate on September 28, 1983.

1. "The War Powers Resolution is probably the most unconstitutional measure Congress has ever passed...."
2. "Congress should never attempt to impose an artificial time limit on the deployment of United States military units. It is the height of nonsense to tell forces who are shooting at you that no matter what they do, you will pull out by a certain date."
3. "Congress cannot be counted on to deal quickly with future problems as the need arises. Unlike the president, an assembly of 535 secretaries of state does not rush to decision."
4. "...The entire course of practice under the Constitution from the administration of President Washington to the current administration of President Reagan, all demonstrate beyond any reasonable doubt that the power to employ the existing forces of the United States in defense of United States citizens and the survival of our country, in reaction to foreign dangers, was and is vested with the president."

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2. Should Congress alone, the president alone, or Congress and the president together develop a reconstruction plan for the South? Why?
3. While Reconstruction is being completed, should the southern states be ruled by army officers using federal troops and military courts to maintain order? Why?
4. Should the civil and political rights of former Confederate civilian and military leaders be taken away forever, temporarily, or not at all? Why?
5. Should all whites in the South who want to vote be required to take a loyalty oath to the United States? Why or why not?
6. Should the southern states be required to ratify Amendment XIV as a condition for readmission to the Union? Why or why not?
7. Should southern property owners be compensated by the federal government for the destruction of their homes and businesses by the Union Army? Why?
8. Should the land of the former slave owners be confiscated and redistributed to the freedmen? Why?
9. Should the federal government set up and fund schools for the freedmen's children? Why?
10. What civil and political rights for ex-slaves should be included in the new constitutions of the southern states?

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